IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.1790 of 2002.

Date of decision: 19.06.2007.

Naresh Chandra & Others. **…..Petitioners**

Versus

State of H.P. & Others. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners: **Mr.Surinder Sharma, Advocate.**

For Respondents 1 & 2: **Mr.M.S.Chandel, Advocate General with Mr.Rajan Dewan, Additional Advocate General.**

For Respondent No.3: **Mr.Baldev Singh, Advocate.**

Dev Darshan Sud, J.

The petitioner has approached this Court alleging malafides by the respondents-State in acquiring his land comprised in Khasra No.2543. The petitioner made a representation to the Principal Secretary (PWD), Government of Himachal Pradesh that the land of Khasra No.2543, measuring 0-03-69 Hects., situated in Mohal and Mauja Ghugar, Tehsil Palampur, District Kangra, is situated along the road going to Dharamshala from Palampur via Nagri should not be acquired as the action had been initiated at the behest of and in order

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

to benefit respondent No. 3 and is tainted with malafidies. Vide annexure Ext.PA addressed to the Principal Secretary (PWD) he writes:-

"With every regard I would like to submit the following few lines for your kind consideration and appropriate action.

1. that I, along with my two brothers own and possess landed property entered at Khata No:33 min, khatauni No. 90 min, khasra No. 2543 measuring 0-03-69 Hects.situated in Mohal and Mouja Ghuggar, The Palampur Distt. Kangra (HP) which is a strip of land along the HPPWD road going to Dharamshala from Palampur via Nagri. The strip measures approximately 75 meters along the road and it's width is 3 meteres to 5 metrs. on one and the other.
2. That just below the aforesaid khasra No. 2543 one Shri Trilok Chand Kapoor son of Shri Sall Ram owns the land of khasra No. 2548 for which there is no path except Through khasra No. 2543 owned by me and my brothers.
3. That Sh. Trilok Kapoor is a very influential person and he exercised his influence on the administration and managed to get notification issued to acquire 2 meters wide strip in khasra No. 2543 which runs up to 30 meters in such a way that his land gets open front in HPPWD Road leaving behind a patch measuring 30 metrs. in length into 1+2 mtrs. in Breadth quite un useful and of no value.
4. That not only this, the authorities did not let us know about the acquisition process. We were neither summoned nor otherwise

informed. This all has been done with a view to give benefit to one person at the cost of public money.

5. That such acts of the department are against the public policy.

6. That not only this, our left out land has been rendered valueless which was carrying huge commercial value being only 100/150 mtrs. away from Palampur Bazar.

7. While resorting to acquiring the land in question, we the land owners were neither taken into consideration nor any notice under Section 4,6 & 9 of Land Acquisition Act, 1894 was ever issued to us which is mandatory in all such cases of acquisition of land. Verbal inquiries made from PWD office today i.e. 22.10.2002 did not bear any fruit and Office did not give convincing reply. This acquisition had been purposefully made to solely help T.C. Kapoor, who has now taken illegal possession of acquired stretch of land, which is going to result in avoidable altercation between other land owners having Land in adjoining stretches.

8. That, I want to take this serious matter to your notice so that such action of the Govt. are checked immediately.

I hope your Honour would very kindly call for the records from the Land Acquisition Collector, Kangra and would take appropriate action in the matter at the earliest".

This Court admitted the writ petition and issued interim directions where the parties were

directed to maintain status quo regarding nature and possession of the land.

I have heard learned counsel for the parties and have gone through the record.

I do not consider it necessary, at this stage, to go into the allegations of malafides. Learned counsel has drawn my attention to Annexure-PH filed alongwith the writ petition to submit that the purported purpose of acquisition; namely; widening of the road, is not borne out from the factual situation at the spot. He has submitted that the average width of the road is about 6.50 to 6.30 meters and no widening is being carried out there. At the site of the acquisition the road is already 7.50 meters. According to him this fact has not been considered at all and is a clear indication of the entire action being actuated by malafidies. He has made a number of other submissions that there is no need of widening the road etc. and the purpose of acquisition is tainted with bias and malafidies etc.

I have not expressed any opinion on the respective merits of the case of the parties since the matter is being referred to the Principal Secretary(PWD), Government of Himachal Pradesh.

The writ petition is disposed of with the following directions:-

(1) The petitioner will file a detailed representation before the Principal Secretary (PWD) stating the grounds on

which he opposes the acquisition of the land. For this purpose, he may place before him all material on which he relies. The Principal Secretary(PWD) will hear the petitioner and, if necessary, inspect the site where the land to be acquired is situated. He will give an independent opinion regarding the necessity of acquisition and also look into the grievance of the petitioner as to whether the acquisition is being made solely for the purpose of depriving the petitioner of his property or the land in question is required for a public purpose.

(2) Such decision will be taken by the Principal Secretary(PWD) independently un-influenced by the material on record which may have been placed in this writ petition. He will pass a speaking order deciding each one of the contentions raised by the petitioner. The petitioner will be given a personal hearing by the Principal Secretary(PWD).

(3) In case a decision adverse to the petitioner is taken, no proceedings for acquisition will be taken till a period of eight weeks from the communication of such order to the petitioner to enable him to

approach this Court for redressal of his grievance.

The petition is disposed of. There shall be no order as to costs.

June 19, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**